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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 142

STATE OF LOUISIANA, EX REL. WILLIE FRANCIS, PETITIONER,

vs.

E. L. RESWEBER, SHERIFF OF THE PARISH OF ST. MARTIN, LOUISIANA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED JUNE 4, 1946.

CERTIORARI GRANTED JUNE 10, 1946.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

STATE OF LOUISIANA, PARISH OF ST. MARTIN, FIRST JUSTICE COURT, FIRST WARD

AFFIDAVIT OF E. L. RESWEBER—Filed August 8, 1945

Before me, the undersigned Justice of the Peace in and for the Parish and Ward aforesaid, personally came and appeared E. L. Resweber, Sheriff, who being duly sworn, deposes and says that on or about the 8th day of November, 1944 in the Parish of St. Martin, one Willie Francis, late of the Parish of St. Martin, did then and there feloniously, wilfully, and of his malice aforethought, kill and murder one Andrew Thomas contrary to the form of the statutes of the State of Louisiana, in such case made and provided and against the peace and dignity of the same.

Wherefore deponent prays that the said Willie Francis may be arrested and further dealt with according to law.

(S.) E. L. Resweber.

Sworn to and subscribed before me this 8th day of Aug., 1945. (S.) D. E. DuChamp, Justice of the Peace.

[File endorsement omitted.]

[fol. 2] IN SIXTEENTH JUDICIAL DISTRICT COURT, PARISH OF ST. MARTIN

INDICTMENT—Filed September 5, 1945

In the name and by the authority of the State of Louisiana, the Grand Jurors of the State of Louisiana, impanelled and sworn to inquire in and for the body of the Parish of St. Martin, in the Sixteenth Judicial District of the said State, upon their oath, present that one Willie Francis late of the Parish of St. Martin, in the Parish of St. Martin, State of Louisiana, and within the jurisdiction of the Sixteenth Judicial District of the said State, with force and arms, on or about the 8th day of November in the year of our Lord, One Thousand Nine Hundred and Forty-four Murdered Andrew Thomas.

Contrary to the form of the Statutes of the State of Louisiana, in such case made and provided and against the peace and dignity of the same.

(S.) L. O. Pecot, District Attorney 16th. Judicial District of the State of Louisiana.

[File endorsement omitted.]

[fol. 3] [Endorsed:] No. 2161. State of Louisiana versus Willie Francis. Indictment. Murder. State Witnesses: Dr. S. D. Yongue, Dr. A. R. Gorne, R. L. Thomas, Van Brocklin, E. L. Resweber, Clemire Norris, Captain K. H. Wright, Dr. Earl Eastin, Albert Judice, Claude Thomas, Pete Dauphine, Detective Edmund Oster, Port Arthur, Texas; Auguste Fuselier, E. L. Canada, Port Arthur, Texas; Claude W. Goldsmith, Port Arthur, Texas; Joseph Trahan, Ovey Meynard, W. D. Atkins. A true Bill: (S.) Max A. Pardee, Foreman. Guilty as charged. (S.) Edwin Rees, Foreman. Rec'd & filed September 13th, 1945. (S.) Mina G. Willis, Dy. Clerk of Court.

[fols. 4-5] In District Court, Parish of St. Martin

#2161

State of Louisiana

vs.

Willie Francis

Murder

Minute Entry—September 6, 1945

The Court after interrogating the accused as to whether or not he had employed counsel and on receiving a negative reply, and upon further interrogation as to his financial ability to employ counsel, the Court, in view of the impecunious condition of the accused, thereupon appointed and assigned the Honorable James R. Parkerson of the Franklin Bar and the Honorable Otto J. Mestayer, of the New Iberia Bar to serve as associate Counsel for the accused in the trial of the case. The accused was thereupon called for arraignment and after a reading of the indictment in full

to the accused, in the presence of his counsel, James R. Parkerson, and upon being asked his plea, entered a plea of "Not Guilty", and asking for a trial by a jury. Counsel for the accused thereupon requested the Court the right to withdraw its plea of Not Guilty and to thereafter, if thought advisable file any pleas or demurrers to the indictment, which reservation was granted by the Court effective to the date of trial. The Court thereupon assigned this case for trial for Wednesday September 12, 1945, at 10:00 o'clock, A. M. Counsel for the State thereupon moved for service of a copy of indictment and copy of the venire on the accused which was ordered by the Court. All of the above in the presence of the accused and of his assigned counsel.

The Sheriff was ordered to adjourn Court until Friday, September 7, 1945, at 10:00 o'clock, A. M.

(S.) Mina G. Willis, Deputy Clerk of Court.

Approved: (S.) James D. Simon, Judge.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 6] In District Court, Parish of St. Martin

Minute Entry—September 12, 1945

This case having been previously assigned for trial this day was called. The State through the District Attorney and James R. Parkerson and Otto J. Mestayer, as counsel for the accused being present in court together with the accused announced their readiness for trial.

Counsel for the Defense asserting the futility of obtaining a full jury from the regular panel suggested to the Court that they would waive the opening of the Tales Jury Box and suggested to the Court that the Sheriff be ordered to notify Forty (40) Special Talesmen qualified to serve as Jurors in this Parish and ordered to report into open Court at Two o'clock P. M., thereby avoiding any unreasonable delay in the trial. Whereupon the Court ordered the Sheriff to summon instanter Forty (40) Special Talesmen for Jury Service and that they be ordered to report into court at Two (2:00) o'clock, P. M. It was further ordered that the list of persons so summoned be furnished counsel for the

State, and the Defense, and that the individual names be written on separate slips of paper, placed in an envelope, sealed and delivered to the Clerk of Court.

The Court ordered the Sheriff to read the names of the witnesses summoned by the State and by the Defense, and on motion of Counsel for the Defense, the witnesses were placed under Rule. All witnesses having answered to their names, the Court ordered the trial of the case to proceed. Accordingly, the empanelling of the Jury was proceeded with, and after all challenges for cause and peremptory challenges had been exercised by the State and the Defense, Eight Jurors had been selected and administered their oath out of the regular panel: Michel Simon, Moise Ambroise Theriot, Anasta Patin, Remi Meche, Patrick H. Maraist, Moise LeBlanc, L. C. Domengues, and J. H. Naquin. Counsel for the Defense having waived the opening of the Tales Jury Box and the Sheriff having summoned into Court Forty Citizens possessing the qualifications of Jurors and the list of said names having been furnished both the State and the Defense, the Court then ordered the continuation of the empanelling of the Jury from said special Talesmen.

After all challenges for cause and peremptory challenges had been exercised by the State and the Defense, the following four named Jurors; namely: Edwin Webre, Edwin Rees, Jerry Guidry, and Lloyd Guidry were administered their oath.

[fol. 7] In view of the possibility of a protracted trial, the Court ordered the selection of an alternate Juror. After examination and challenges, Felix Pellerin was selected by the State and the Defense as the alternate Juror and administered his oath. After the polling of the Jury, the Court ordered the Sheriff to finally discharge the remainder of the Petit Jury panel and the special Talesmen summoned into Court and whose names had not been drawn.

The District Attorney proceeded to read the indictment returned by the Grand Jury, the law applicable thereto and his opening statement. Counsel for the accused waived the right of their opening statement but reserved the privilege of making such statement at the conclusion of the State's case. The Court thereupon ordered that the trial proceed by the State offering its proof. After hearing witnesses offered by the State and it being 10:15 P. M. the Court, after instructing the Jury and remanding them into

the custody of the Sheriff adjourned Court until Thursday, September 13, 1945, at 10:00 o'clock A. M.

(S.) Mina G. Willis, Deputy Clerk of Court.

Approved: (S.) James D. Simon, Judge.

[1]Clerk's Certificate to foregoing paper omitted in printing.

[fol. 8] In District Court, Parish of St. Martin

Minute Entry—September 13, 1945

This case having been ordered to be resumed for trial this day was called. The State through the District Attorney and James R. Parkerson and Otto J. Mestayer, as counsel for the accused, being present in court together with the accused, the court ordered the Sheriff to escort the Jury into the Courtroom. The polling of the Jury being waived, the Court ordered the trial of the case to proceed. After hearing the remaining evidence submitted by the District Attorney on behalf of the State, the State announced that it rested its case subject to rebuttal. Counsel for the Defense announced to the Court that it had no evidence to offer on behalf of the accused and rested its case. After the arguments of counsel for the State and for the Defense the Court thereupon proceeded to duly instruct the Jury on their duties and the law, following which the Jury retired to their room for deliberation.

The Sheriff in charge of the Petit Jury having thereafter informed the Court that the Jury had announced its readiness to report its verdict into Court, the Court thereupon ordered the Sheriff to escort in the Jury.

Counsel for the State and for the Accused having waived the polling of the Jury, the Court thereupon inquired from the Jury whether they had arrived at a verdict. Upon receiving an affirmative answer, the Court ordered the Foreman of the Jury to hand the Indictment and Verdict to the Sheriff. Whereupon the Clerk of Court, under the orders of the Court announced the Verdict of the Jury reading as follows: "Guilty as Charged, Edwin Rees, Foreman."

Counsel for the Defense then moved that the Jury be polled individually to determine whether the Verdict so announced was their respective Verdict. Upon a polling of the Jury by the Clerk upon the orders of the Court, each

Juror announced the Verdict as shown on the back of the Indictment to be his respective verdict. All of the above being done in the presence of the accused and his counsel. Whereupon, the Court ordered the Clerk of Court to record the Verdict and that the Accused be remanded to the Parish Jail to await the Sentence of the Court.

[fol. 9] The Sheriff was ordered to adjourn Court until Friday, September 14, 1945, at 10:00 o'clock A. M.

(S.) Mina G. Willis, Deputy Clerk of Court.

Approved: (S.) James D. Simon, Judge.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 10] In District Court, Parish of St. Martin

* * * * * * * *

Minute Entry—Filed September 14, 1945

The accused having been called up for sentence, the following sentence was imposed: Under Article 30 of the Criminal Code of Louisiana, I now sentence you Willie Francis to suffer death in the manner provided by law.

The Sheriff was ordered to adjourn Court without date.

(S.) Mina G. Willis, Deputy Clerk of Court.

Approved: (S.) James D. Simon, Judge.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 11] Death Warrant

Executive Department

Baton Rouge, La., March 29th, 1946.

To the Sheriff of the Parish of St. Martin:

Whereas, it appears from the annexed daly certified copy of the Court proceedings that, at a session of the Honorable the Sixteenth Judicial District Court, Parish of St. Martin, State of Louisiana, and held on the 13th day of September, 1945, Willie Francis was tried and convicted of the crime of Murder and for said offense was by judgment of said Court rendered on the 14th day of September, 1945, sentenced by His Honor, the Judge of said Court, to die in the manner and form prescribed by law.

Now, Therefore, I, J. H. Davis, Governor of the State of Louisiana, do hereby direct and require you, the Sheriff of the Parish of St. Martin to cause the execution to be done on the body of said Willie Francis so convicted and condemned, in all things according to the judgment and sentence of said Court and the law in all such cases made and provided, by electrocution; that is, causing to pass through the body of the said Willie Francis a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of the said Willie Francis until said Willie Francis is dead. Said execution to take place in the Parish of St. Martin, State of Louisiana, on the 3rd day of May, 1946, between the hours of 12:00 o'clock Noon and 3:00 o'clock P. M., within the walls of the Parish Jail in a room entirely cut off from view of all, except those permitted by law to be in said room. Such execution shall take place in the presence of the Sheriff of said Parish or one of his duly designated deputies, the Coroner of said Parish, a physician summoned by the Sheriff to be present, the operator of the electric chair, a Priest or Minister of the Gospel, if requested by the condemned person, and not less than five nor more than seven other witnesses, all citizens of the State of Louisiana; no person under twenty-one years of age to be allowed in said execution room. Said persons shall duly attest the Proces Verbal of the execution under oath, which Proces Verbal shall be filed with the Clerk of the Court of the Parish of St. Martin together with the annexed duly certified copy of the proceedings had in said case in said Court, and for all of which this shall be your warrant and authority.

Given under my signature and the Great Seal of the State of Louisiana, at the State Capitol, in the City of Baton Rouge, on this the 29th day of March, A. D. 1946.

(Signed) J. H. Davis, Governor of the State of Louisiana. (Seal.)

By the Governor: (Signed) Wade O. Martin, Jr., Secretary of State.

Received & filed April 4th, 1946.

(Signed) M. A. Barras, Deputy Clerk of Court.

A true copy of the original.

Attest:

(S.) E. L. Resweber, Sheriff of St. Martin Parish, La.

[fol. 12] REPRIEVE

State of Louisiana

Executive Department

Baton Rouge

To: The Honorable E. L. Resweber, Sheriff, Parish of St. Martin, St. Martinville, Louisiana.

Whereas, Willie Francis was convicted of the crime of murder in the Sixteenth Judicial District Court in and for the Parish of St. Martin, and

Whereas, sentence of death was imposed; and

Whereas, I have heretofore issued my warrant ordering his execution on the 3rd day of May, 1946, and

Whereas, it appears that the ends of justice will be served if the execution of said warrant is stayed and a reprieve until May 9, 1946, is granted to said Willie Francis.

Now, Therefore, I, James H. Davis, Governor of the State of Louisiana, hereby stay compliance with said warrant ordering the execution of said sentence, and do issue a reprieve to the said Willie Francis, and direct you as Sheriff of the Parish of St. Martin to stay the execution of said sentence until Thursday, May 9, 1946, at which time you are commanded to cause the execution to be done on the person so condemned in all things according to the judgment against him, and my said warrant, and otherwise to perform all duties imposed upon you by said warrant in due form of law.

In Testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 3rd day of May, A. D., 1946.

(Signed) J. H. Davis, Governor of Louisiana. (Seal.)

By the Governor (Signed) Wade O. Martin, Jr., Secretary of State.

A true copy of the original attest:

(S.) E. L. Resweber, Sheriff of St. Martin Parish, La.

[fol. 13] IN SUPREME COURT OF LOUISIANA

No. 14287

STATE OF LOUISIANA ex Rel.,

vs.

E. L. RESWEBER, Sheriff of the Parish of St. Martin, Louisiana

PETITION FOR WRIT OF HABEAS CORPUS—Filed May 7, 1946

To the Honorable, the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Willie Francis, a resident of the Parish of St. Martin, State of Louisiana, with respect represents:

1

That he is at the present time and for the past five days, confined in the Parish Prison of Iberia Parish in the City of New Iberia, Louisiana, within the jurisdiction of this Court, and that your relator is now unlawfully and illegally detained against his will and consent and deprived of his liberty in the said Parish Prison, and is in the illegal custody of E. L. Resweber, Sheriff of the Parish of St. Martin, who is without authority detaining relator and depriving him of his liberty.

2

That relator was indicted, convicted and sentenced to be electrocated for murder, all more fully set out under the cause entitled State of Louisiana vs. Willie Francis, No. 2161 of the Criminal Docket of the Parish of St. Martin, Louisiana.

3

That a mandatory Death Warrant was signed by His Excel-ency, James H. Davis, Governor of Louisiana on March 26, 1946, calling for the execution by electrocution of relator between the hours of 12 P. M. and 3 P. M. on the 3rd of May, 1946. Said warrant is now in the possession of E. L. Resweber, Sheriff of St. Martin Parish, Louisiana.

4

That relator Willie Francis in accordance with the said Death Warrant and on the said date at the said time was electrocuted by the officials of the State of Louisiana.

5

That relator lived through the electrocution and no further attempts were made on May 3rd, 1946 to kill him.

[fol. 14]

6

That the Death Warrant signed by the Governor of Louisiana on March 26, 1946 calling for the execution of relator on May 3rd, 1946 between the hours of 12 P. M. and 3 P. M. has been executed and this warrant is without further force and effect.

7

That a pretended order has been issued by the Governor and signed by him on May 3rd, 1946 ordering the execution of the aforesaid Death Warrant on May 9, 1946. That the said pretended order is in the possession of E. L. Resweber, Sheriff of St. Martin Parish.

8

That the said pretended order ordering the execution of relator on May 9, 1946 is absolutely null and void and without basis in law.

9

That relator is being held in the custody of E. L. Resweber, Sheriff of St. Martin Parish, Louisiana on the basis of said pretended order which is absolutely null and void.

10

Upon information and belief, relator avers that Sheriff E. L. Resweber, Parish of St. Martin, intends to have him electrocuted on May 9, 1946 on the basis of the said pretended order; that relator is and will be deprived thereby of his life and liberty without due process of law.

11

That no subsequent valid order or Warrant signed or to be signed by the Governor of Louisiana for the electrocution

of mover is or can be issued, that the sentence has been carried out and through an Act of God your petitioner Willie Francis has lived through said execution.

12

That relator Willie Francis was electrocuted on May 3, 1946 and has lived through the ordeal and any further electrocution or threat thereof constitutes cruel and unusual punishment in violation of the Constitution of the State of Louisiana.

13

That relator's imprisonment is not authorized by any order, decree, judgment or sentence of any Court, or by [fol. 14a] any provision of law, and that relator is desirous of regaining his liberty and to be released of his unauthorized and illegal imprisonment, and that a writ of Habeas Corpus is necessary in the premises.

14

That relator has applied to the 16th Judicial District Court for the Parish of St. Martin reciting the facts and allegations hereinabove stated and praying for a Writ of Habeas Corpus to issue; that said application for issuance of the Writ was denied by the Honorable James D. Simon, Judge of the 16th Judicial District Court.

15

That the said petition to the said District Court and its denial by Judge James D. Simon in the form of a certified copy is annexed hereto and made a part hereof.

Whereof, the premises and annexed affidavit considered, petitioner prays that a writ of Habeas Corpus issue herein to the person or persons in charge of the Parish prison wherein relator is confined, and particularly the Honorable E. L. Resweber, Sheriff of the Parish of St. Martin and the Honorable James D. Simon, Judge of the 16th Judicial District Court, be ordered to produce the body of petitioner in this Court on the — day of —, 1946 at the hour of — o'clock — M. and then and there a true and correct return make of the reason and cause of the detention of petitioner.

Petitioner further prays, that after due proceedings had,

that the Writ of Habeas Corpus issued be maintained, that petitioner be released from further confinement and prays for all other orders necessary in the premises, and for general and equitable relief.

By his Attorney (S.) Bertrand de Blanc.

[fol. 15] *Duly sworn to by Willie Francis. Jurat omitted in printing.*

ORDER DENYING WRIT OF HABEAS CORPUS

The application for issuance of the Writ herein sought is denied.

Officially at St. Martinville, La., May 7th 1946 at 4:30 P. M.

(S.) James D. Simon, Judge.

[File endorsement omitted.]

[fol. 16] IN SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR WRITS OF CERTIORARI, MANDAMUS, PROHIBITION AND HABEAS CORPUS

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Willie Francis, a resident of the Parish of St. Martin, State of Louisiana, with respect represents:

1

That he is at the present time and since the 3rd of May, 1946 has been illegally confined to the Parish Prison of Iberia Parish in the City of New Iberia, Louisiana, within the jurisdiction of this Court, and that your relator is now unlawfully and illegally detained against his will and consent and deprived of his liberty in the said Parish Prison, and is in the illegal custody of E. L. Resweber, Sheriff of the Parish of St. Martin, who is without authority depriving him of his liberty.

2

That relator was indicted, convicted and sentenced to be electrocuted for murder, all more fully set out under the cause entitled State of Louisiana vs. Willie Francis, No. 2161 of the Criminal Docket of the Parish of St. Martin, Louisiana. A certified true copy of which is annexed hereto and made a part hereof as Exhibit "A".

3

That based upon the above proceedings a mandatory Death Warrant was signed by His Excellency, James H. Davis, Governor of the State of Louisiana on March 26, 1946 calling for the execution by electrocution of relator between the hours of 12 P. M. and 3 P. M. on the 3rd of May, 1946. Said warrant is now in the possession of E. L. Resweber, Sheriff of St. Martin Parish, Louisiana. A certified true copy of which is annexed hereto and made a part hereof as Exhibit "B.'

[fol. 17]

4

That relator Willie Francis in accordance with the said Death Warrant and on the morning of the 3rd. of May, 1946 was brought from the Iberia Parish Prison to the St. Martin Parish Prison. That between the hours of 12 P. M. and 1 P. M. relator was placed in the official electric chair of the State of Louisiana; that he was strapped thereto, that the necessary wires were attached to his body in the regular manner; that after all the necesary steps had been taken the official electrocutioner, an expert, turned on the switch and a current of electricity was caused to pass through the body of relator, all in the presence of the official witnesses.

5

That relator, through an act of God, lived through the electrocution and was then returned to the illegal custody of E. L. Resweber, Sheriff of St. Martin Parish, Louisiana.

6

That the officials acts regarding the electrocution recited above which took place on the 3rd. of May, 1946 constituted a "fait accomplis" and constituted a bar to any further attempts.

7

That the Death Warrant signed by the Governor of the State of Louisiana, His Excellency James H. Davis on March 26, 1946 calling for the execution of relator on May 3rd, 1946 between the hours of 12 P. M. and 3 P. M. has been executed and this warrant is without any further force and effect. A certified true copy of which is annexed hereto and made a part hereof as Exhibit "B".

8

That a pretended order has been issued by the Governor of the State of Louisiana, His Excellency James H. Davis and signed by him on May 3rd, 1946 ordering the execution of the aforesaid Death Warrant on May 9th, 1946. That the said pretended order is in the possession of E. L. Resweber, Sheriff of St. Martin Parish, Louisiana. A certified true copy of which is annexed hereto and made a part hereof as Exhibit "C".

[fol. 18] 9

That relator is being held in the custody of E. L. Resweber, Sheriff of St. Martin Parish, Louisiana on the basis of said pretended order which is absolutely null and void.

10

That since the filing of the original application for the Writ of Habeas Corpus, the Lieutenant Governor of the State of Louisiana, His Excellency J. Emile Verret, Acting Governor in the Absence of the Governor, granted to relator a 30 day stay of execution.

11

That upon information and belief, relator avers that upon the expiration of said 30 day stay of execution E. L. Resweber, Sheriff of St. Martin Parish, Louisiana, intends to have him electrocuted, that relator is and will be deprived of his life and liberty without due process of law guaranteed to him under the 14th. Amendment of the Constitution of the United States of America as well as Article 1, Section 2 of the Constitution of the State of Louisiana.

12

That no subsequent valid order or Warrant signed or to be signed by the Governor of Louisiana for the electrocution of mover is or can be issued, that the sentence has been carried out and through an Act of God relator Willie Francis has lived through said execution.

13

That relator Willie Francis was electrocuted on May 3, 1946 and has lived through the ordeal and any further electrocution or threat thereof constitutes cruel and unusual punishment in violation of the Constitution of the State of Louisiana, Article 1, Section 12.

14

Relator further avers that if he be subjected to another electrocution same constitutes a violation of Article 1, Section 9 of the Constitution of the State of Louisiana which provides that no person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial, or a motion in arrest of judgment is sustained none of which has been done by him.

[fol. 19]

15

That relator's imprisonment is not authorized by any order, decree, judgment or sentence of any Court, or by any provision of law, and that relator is desirous of regaining his liberty and to be released of his unauthorized and illegal imprisonment, and that a writ of Habeas Corpus is necessary in the premises.

16

That relator has applied to the Honorable James D. Simon, Judge of the 16th Judicial District Court for the Parish of St. Martin, Louisiana, praying for a Writ of Habeas Corpus to issue; that the said application for issuance of the Writ was denied by the Honorable James D. Simon, Judge of the said Court; That the said petition to the said Judge of the said Court and its denial in the form of a certified true copy is annexed hereto and made a part hereof as Exhibit "D".

That relator has given due notice to His Excellency James H. Davis, Governor of the State of Louisiana, the Honorable J. Emile Verret, Lieutenant Governor of the State of Louisiana, the Honorable James D. Simon, Judge of the 16th Judicial District Court, State of Louisiana, the Honorable Fred LeBlanc, Attorney General in and for the State of Louisiana, the Honorable L. O. Pecot, District Attorney in and for the 16th Judicial District Court, State of Louisiana, the Honorable E. L. Wesweber, Sheriff of the Parish of St. Martin, State of Louisiana, of relator's intention to apply to this Honorable Court for these writs of certiorari, prohibition and mandamus all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relator prays that Writs of Certiorari, Mandamus and Prohibition issue commanding the Honorable James D. Simon, Judge of the 16th Judicial District Court to send up to this Court the original record or a certified copy of all proceedings had in the cause hereinabove mentioned and that upon due hearing a Writ of Habeas Corpus issue directing His Excellency James H. Davis, Governor of the State of Louisiana, the Honorable J. Emile Verret, Lieutenant Governor of the State of Louisiana, the Honorable James D. Simon, Judge of the 16th Judicial District Court, State of Louisiana, the Honorable Fred Le Blanc, Attorney General in and for the State [fol. 20] of Louisiana, the Honorable L. O. Pecot, District Attorney in and for the 16th Judicial District Court, State of Louisiana, the Honorable E. L. Resweber, Sheriff of the Parish of St. Martin, State of Louisiana, to produce the body of relator before said 16th Judicial District Court on — day of ——, 1946, at — o'clock — M. and then and there to show cause why relator is detained and why he should not be released; that an order issue prohibiting all of the above-named officials of the State of Louisiana from executing by electrocution relator Willie Francis until the final determination of the herein entitled and numbered cause.

Petitioner further prays, that after due proceedings had, that the Writ of Habeas Corpus issued be maintained, that petitioner be released from further confinement and prays for all other orders necessary in the premises, and for general and equitable relief.

(S.) Bertrand De Blanc, Attorney for Petitioner.

STATE OF LOUISIANA,
Parish of Orleans:

Before Me, —— ——, the undersigned authority personally came and appeared Bertrand De Blanc, Attorney at Law, who after being duly sworn did depose and say:

That he is the true and lawful attorney for the relator in the above and foregoing petition, that he prepared the same, that he gave notice of intention to apply to this Court for writs of certiorari, mandamus and prohibition in this case to His Excellency James H. Davis, Governor of the State of Louisiana, the Honorable J. Emile Verrett, Lieutenant Governor of the State of Louisiana, the Honorable James D. Simon, Judge of the 16th Judicial District Court, State of Louisiana, the Honorable Fred LeBlanc, Attorney General in and for the State of Louisiana, the Honorable [fol. 21] L. O. Pecot, District Attorney in and for the 16th Judicial District Court, State of Louisiana, the Honorable E. L. Resweber, Sheriff of the Parish of St. Martin, State of Louisiana, and delivery and service of a copy of this petition has been made on said above-named officials by registered mail; and that all the allegations therein contained are true and correct.

(S.) Bertrand De Blanc, Attorney for Petitioner.

Sworn to and subscribed before me this 9th day of May, 1946. (S.) Louis P. Niklaus. (Seal.)

[fol. 22] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

SUPPLEMENTAL PETITION—Filed May 14, 1946

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the State of Louisiana:

The supplemental and amended petition of the State of Louisiana on the relation of Willie Francis, a resident of the Parish of St. Martin, State of Louisiana, in the

above entitled and numbered cause, with respect, represents:

1

That on May 9th, 1946 a petition of the State of Louisiana on the relation of Willie Francis, was filed in this Honorable Court applying for Writs of Certiorari, Mandamus, Prohibition, and Habeas Corpus in the cause entitled State of Louisiana Ex Rel. Willie Francis vs. E. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana, Supreme Court of the State of Louisiana, No. —.

2

That under the facts recited therein relator is and will be denied his right of Due Process as guaranteed him under the following section of the 14th Amendment of the Constitution of the United States of America:

> "Nor shall any State deprive any person of life, liberty, or property, without due process of law;"

3

That under the facts recited therein relator is and will be denied his right against Double Jeopardy as guaranteed to him under the following section of the Fifth Amendment of the Constitution of the United States of America:

> "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;"

4

That under the facts recited therein relator is and will be subjected to cruel and unusual punishment contrary to the [fols. 23-24] 8th Amendment of the Constitution of the United States of America:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

5

That relator desires to retain all rights of appeal and recourse to the Supreme Court of the United States of America on the Constitutional questions hereinabove presented.

Wherefore, this supplemental and the original petition considered relator prays that the Writs of Certiorari,

Mandamus, Prohibition be issued and maintained as prayed for, and all general and equitable relief.

(S.) Bertrand de Blanc, Attorney for Relator.

STATE OF LOUISIANA,
Parish of St. Martin:

Before me the undersigned authority, personally came and appeared Bertrand de Blanc, Attorney at Law, who being by me duly sworn, did depose and say:

That he is the true and lawful attorney for the relator in the above and foregoing supplemental and amended petition, that he prepared the same, that delivery and service of a copy of this supplemental and amended petition has been made by registered mail on His Excellency James H. Davis, Governor of the State of Louisiana, the Honorable J. Emile Verret, Lieutenant Governor of the State of Louisiana, the Honorable James D. Simon, Judge of the 16th Judicial District Court, State of Louisiana, the Honorable Fred LeBlanc, Attorney General in and for the State of Louisiana, the Honorable L. O. Pecot, District Attorney in and for the 16th Judicial District Court, State of Louisiana, the Honorable E. L. Resweber, Sheriff of the Parish of St. Martin, State of Louisiana, and that all the allegations therein contained are true and correct.

(S.) Bertrand de Blanc.

Sworn to and subscribed before me this 13th day of May, 1946. (S.) Paul S. Daspit, Jr., Notary Public. (Seal.)

[fol. 25] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

ANSWER—Filed May 13, 1946

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the State of Louisiana:

And now into Court, in answer to and in opposition to plaintiff's petition, comes His Excellency James H. Davis, Governor of the State of Louisiana; Honorable J. Emile

Verret, Lieutenant Governor of the State of Louisiana and Honorable Fred S. LeBlanc, Attorney General of the State of Louisiana, herein appearing through their undersigned counsel, M. E. Culligan, Special Assistant Attorney General of the State of Louisiana and Honorable E. L. Resweber, Sheriff, Parish of St. Martin, herein appearing through L. O. Pecot, District Attorney and L. O. Pecot in proper person, and for answer to plaintiff's petition with respect shows:

I

Respondents admit that petitioner is and has been since May 3, 1946 in the Parish Prison of Iberia Parish but deny that he is unlawfully and illegally detained, as he is in the legal custody of Honorable E. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana.

II

This allegation is admitted.

III

Respondents admit, that as set forth by petitioner, a mandatory death warrant was signed by His Excellency James H. Davis, Governor of the State of Louisiana, on March 26, 1946, commanding the execution by electrocution of the petitioner between the hours of 12:00 Noon and 3:00 P. M., on the third day of May, 1946, which said warrant [fol. 26] was cancelled on May 8th, 1946, and recalled on the same date by His Excellency J. Emile Verret, Lieutenant Governor, and, then, Acting Governor of the State of Louisiana.

IV

Respondents admit all necessary preparatory steps had been taken to cause the death of petitioner by electrocution in accordance with Article 569 of the Louisiana Code of Criminal Procedure as amended by Act 14 of 1940, but that through an latent electrical defect, no electric current reached the body of the petitioner, and his death did not and has not occurred.

V

Respondents admit that the petitioner is still living and is in the legal custody of Honorable E. L. Resweber, Sheriff, St. Martin Parish, Louisiana.

VI

Respondents deny this allegation, as the sentence of death has not been executed, nor has the petitioner been executed.

VII

Respondents deny that the Governor's warrant of March 26, 1946, has been executed, and informs this Honorable Court that the said warrant was cancelled on May 8, 1946.

VIII

Respondents deny that any "pretended" order was issued and submit that Exhibit "C", attached to plaintiff's petition, speaks for itself.

IX

This allegation is denied, as petitioner is being held under commitment and sentence of the 16th Judicial District Court, awaiting the execution thereof by His Excellency, the Governor.

X

Respondents admit a legal reprieve was granted by His Excellency, Lieutenant Governor J. Emile Verret, Acting Governor at the time of the issuance thereof, namely, May 8th, 1946, staying the execution of the sentence imposed [fol. 27] by the 16th Judicial District Court until after June 7th, 1946, a copy pf which reprieve is attached.

XI

This allegation is denied. Honorable E. L. Resweber, Sheriff, will execute the sentence of death strictly in accordance with law.

Respondents further deny that this petitioner or any other person will ever be deprived by respondents of their life or their liberty without due process of law and will at all times fulfill their oath to uphold the Constitution of the United States, the laws of the United States and the Constitution and laws of the State of Louisiana.

XII

Respondents admit that petitioner is alive and deny that the sentence of death imposed by the 16th Judicial District Court has been executed and submit that it is the mandatory

duty of His Excellency, the Governor of Louisiana, to have such sentence executed, subject only to the provisions of Article 5, Sec. 10 of the Constitution of Louisiana, for the year 1921.

XIII

Respondents deny that the petitioner was electrocuted, and submit the sentence of death has not been executed.

Respondents further deny that the execution of the death sentence, upon the expiration of the reprieve, violates Article 1, Sec. 12 of the Constitution of Louisiana, 1921.

This Article of our Constitution is a replica of Amendment #8 of the United States Constitution (which is not binding on State Courts), and in construction of these exact words it was held that a sentence within the limits prescribed by statutes for an offense will not ordinarily be regarded as, "cruel and unusual punishment".

Bailey v. U. S., C. C. A. Okl., 74 F. (2d) 451, 452;
Welch v. Hudspeth, C. C. A. Kan., 132 F. (2d) 434, 436;
Moore v. Aderhold, C. C. A. Kan., 108 F. (2d) 729.

[fol. 28] Death by electrocution is not a cruel or inhuman mode of punishment.

(Hart v. Commonwealth, 109 S. E. 582, 587, 131 Virginia 726);
(People v. Durston, 24 N. E. 6, 7, 119 New York 569);
(State v. Tomassi, 69 A. 214, 217, 75 New Jersey L. 739);

and Your Honors have held that the infliction of death by electrocution is more humane and less painful than by hanging.

State ex rel. Pierre v. Jones, 200 La. 809, 9 So. (2d) 42, and in which the U. S. Supreme Court denied writs, 63 S. Ct. 64, 87 L. Ed. —.

Defendant "is not entitled to be discharged because he stands validly convicted and sentenced to death and cannot legally complain of the death penalty being inflicted by means of electrocution under a constitutional statute providing for that method or mode of execution".

(State v. Jones, supra.)

XIV

Respondents deny that the execution of the sentence of death upon expiration of the reprieve will violate Article 1, Sec. 9 of the Constitution of the State of Louisiana (1921). This Article reads in part as follows:

> "* * * nor shall any person be twice put in jeopardy of life or liberty for the same offense * * *"

As is clearly shown by the Article itself, "jeopardy" means the placing of a person upon his trial twice for the same offense.

In Rosser v. Commonwealth, 167 S. E. 257, 259, 159 Va. 128, it was held that "jeopardy", within rule against double jeopardy, means danger of conviction. Const., Bill of Rights, Sec. 8.

"Jeopardy" applies not to execution of the sentence, but only to a trial upon the same offense.

In State v. Yokum, 155 La. 846, 875, Your Honors held:

> [fol. 29] "'Jeopardy' is used in our state Constitutions to designate the danger of conviction and punishment which a defendant in a criminal prosecution incurs, when a valid indictment has been found, or a valid information or complaint presented, and a petit jury has been impaneled and sworn to try the case and to give a verdict in a court of competent jurisdiction."

XV

Respondents deny this Article and submit that petitioner is legally in custody of Sheriff E. L. Resweber, St. Martin Parish, Louisiana, pending the execution of the sentence of the 14th Judicial District Court, according to law.

XVI

Respondents admit this allegation.

XVII

Respondents admit they have received copy of plaintiff's petition.

Further answering, respondents, His Excellency James H. Davis, Governor of the State of Louisiana; Honorable J. Emile Verret, Lieutenant Governor of the State of Louisi-

ana; Honorable Fred S. LeBlanc, Attorney General of the State of Louisiana and Honorable L. O. Pecot, District Attorney for the 16th Judicial District, do not have the custody of petitioner; the petitioner being in the custody of your respondent H. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana, and that petitioner's application should be denied for the following reasons, to-wit:

(a) The 16th Judicial District Court had jurisdiction over the crime for which petitioner was convicted.

(b) Murder, the crime with which petitioner stands convicted, is a felony.

(c) Petitioner was legally indicted for the crime of murder.

(d) Petitioner was legally tried by a Jury for his crime.
[fol. 30] (e) A legal verdict was returned by the Jury.

(f) A legal sentence was imposed by the Court and which sentence is still in full force and effect.

(g) No appeal was taken.

(h) Application to the Board of Pardons was denied.

(i) The legal method of death is fixed by the Legislalature.

(j) A legal warrant commanding the execution of relator by the legal method of death was issued by the Governor.

(k) The sentence of death imposed by the Court is the legal penalty fixed by the law, and which sentence it is the mandatory duty of the Governor to execute; it is then the mandatory duty of the Sheriff to cause the execution to be done upon the person of the relator as commanded in the warrant of the Governor.

(l) The warrant of death, previously issued by the Governor, has been cancelled and recalled on May 8th, 1946, and a reprieve granted on the same date, staying execution of the petitioner until after June 7th, 1946.

(m) Petitioner is now held under legal commitment of the 16th Judicial District Court under sentence and judgment rendered on September 14th, 1945.

(n) The Supreme Court can not revise the sentence of the District Court, or commute the sentence.

(o) The District Court is clothed with the sound discretion to refuse to grant the writ of habeas corpus and properly exercised such discretion, the sentence of that court being in full force and effect until the sentence is executed by the warrant of the Governor and execution done upon the person of the petitioner by the Sheriff.

[fols. 31-32] Wherefore, petitioners pray that plaintiff's petition be dismissed.

Respectfully submitted, Signed M. E. Culligan, Special Assistant Attorney General for the State of Louisiana and Attorney for Respondents, James H. Davis, Governor; J. Emile Verret, Lieutenant Governor and Fred S. LeBlanc, Attorney General. L. O. Pecot, by M. E. Culligan, L. O. Pecot, in P. P. L. O. Pecot, by M. E. Culligan, L. O. Pecot, District Attorney for the 16th Judicial District, Parish of St. Martin and Attorney for Respondent. E. L. Resweber, Sheriff, St. Martin Parish.

Duly sworn to by M. E. Culligan. Jurat omitted in printing.

A copy of this answer and opposition has been sent by Registered Mail, addressed to Mr. Bertrand DeBlanc, Attory for Petitioner, St. Martinville, Louisiana.

[fol. 33] IN SUPREME COURT OF LOUISIANA

[Title omitted]

ANSWER

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the State of Louisiana:

Now comes, James D. Simon, Judge of the Sixteenth Judicial District Court in and for the Parish of St. Martin, Louisiana, made respondent in the above styled and numbered matter, and avers:

First

That the prayer of the Petition herein, seeking the issuance of a Writ of Habeas Corpus to be directed, among

others, to your Respondent, avers that your respondent in his official capacity:

> "* * * produce the body of relator before said 16th Judicial District Court on — day of —, 1946, at — o'clock —M., and then and there to show cause why relator is detained and why he should not be released; that an order issue prohibiting all of the above-named officials of the State of Louisiana from executing by electrocution relator Willie Francis until the final determination of the herein entitled and numbered cause."

Second

Your respondent shows that the body and person of the relator is not within the custody of your respondent either as Judge of the Sixteenth Judicial District Court or otherwise. That the relator herein is within the custody and control of the Executive Department of our State Government, and that pending the execution of a sentence lawfully imposed the Judiciary Department or the Court imposing the sentence, either in fact or law, exercises no detention of the prisoner.

Third

That the execution of a sentence imposed by a Court of this State is vested absolutely and exclusively within the province and authority of the Executive Department of this State, and in which the Judiciary has no legal or constitutional right or duty of participation, subject only, how- [fol. 34] ever, to the right of judicially inquiring, upon proper showing, whether a prisoner is lawfully deprived of his liberty, to discharge him if unlawfully held, or if lawful to remand him into the custody of the Executive Department for the execution of the sentence imposed.

Your respondent, for the reasons aforestated, submits with all due respect, that the petition herein fails to show a Right or Cause of Action as to him and that he should be dismissed from said proceedings.

Respectfully submitted, (S.) James D. Simon, Judge
Sixteenth Judicial District of Louisiana.

[fol. 35] IN SUPREME COURT OF LOUISIANA

No. 38,219

No. 38,221

STATE OF LOUISIANA ex rel. WILLIE FRANCIS

v.

E. L. RESWEBER, Sheriff, et al.

In re Willie Francis Applying for Writ of Certiorari, Prohibition, Mandamus and Habeas Corpus

Signed C. A. O'N, W. G. R., J. B. F., A. L. P., J. B. A., F. W. H., R. F. K.

DECISION—May 15, 1946

Per CURIAM:

The relator, Willie Francis, was convicted of the crime of murder and was sentenced to suffer the penalty of death. The Governor issued the death warrant on March 29, 1946, directing the sheriff to cause the sentence to be executed on the 3rd day of May 1946, between the hours of 12:00 o'clock noon and 3:00 o'clock p. m. The warant directed and ordered the sheriff to cause the sentence to be carried out by electrocution, that is, by "causing to pass through the body of the said Willie Francis a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of the said Willie Francis until said Willie Francis is dead." The warrant was worded according to articles 569 and 570 of the Code of Criminal Procedure, as amended by Act 14 of 1940, adopting electrocution as the method of executing a sentence of death.

On the day set for the execution, May 3, 1946, between the Hours of 12:00 o'clock noon and 3:00 o'clock p. m., Willie Francis was strapped in the electric chair and an attempt was made to electrocute him, but, because of some defect in the apparatus devised and used for electrocutions, the [fol. 36] contrivance failed to function, and after an unsuccessful attempt to electrocute Francis he was removed from the chair. On that day, the Governor granted a reprieve until May 9, 1946, declaring that the ends of justice would be

served if the execution of the death warrant should be stayed and a reprieve granted until May 9, 1946.

On the 7th day of May, Willie Francis, represented by an attorney at law, filed a petition in the district court, setting forth substantially the facts which we have related and praying for a writ of habeas corpus to be directed to the sheriff to produce him, Willie Francis, in court and to show cause why he should not be released from custody. The judge of the district court denied the petition for a writ of habeas corpus. On the next day, May 8, 1946, Willie Francis, represented by two other attorneys at law, filed another petition in the district court praying for a writ of habeas corpus, directed to the sheriff, commanding him to produce Willie Francis before the court, to be released from custody. The judge of the district court again denied the petition for a writ of habeas corpus.

On the same day, May 8, 1946, the relator filed a petition in this the Supreme Court, and on the next day filed another petition in this court, praying for writs of certiorari, prohibition, mandamus and habeas corpus. In his petitions to this court, the relator sets forth all of the facts which we have recited, and contends, as he contended in his petitions to the district court, that a refusal to grant him a writ of heabeas corpus and to order his execution stayed would be a denial of due process of law and of the equal protection of laws, as guaranteed by the 14th amendment of the Constitution of the United States and by Section 2 of Article I of the Constitution of this State. He contends further that he was electrocuted on May 3, 1946, and that, considering the ordeal to which he was subjected then, any further electrocution would constitute cruel and unusual punishment, in violation of Section 12 of Article I of the Constitution, and would be violative also of Section 9 of Article I of the Constitution, providing that no person shall be put in jeopardy of life or liberty twice for the same offense.

In his petitions invoking the supervisory jurisdiction of this court the relator prays that the writs which he asks for be directed to the District Judge, to the Sheriff having [fol. 37] the relator in custody, to the Governor of Louisiana, and the Lieutenant Governor, acting Governor in the absence of the Governor from the state, to the Attorney General, and to the District Attorney who prosecuted the relator.

Inasmuch as it was impossible for this court to give consideration to the petitions before the hour of 12 o'clock noon on May 9, 1946, the court requested the Lieutenant Governor, acting Governor, to grant a reprieve for a period not exceeding 30 days; and on that request the Lieutenant Governor, acting Governor, granted the reprieve until 12 o'clock noon, Friday, June 7, 1946. Meanwhile, copies of the petitions to this court were served upon or furnished to the officials to whom the relator asks to have the writs directed.

Attached to one of the petitions of the relator, invoking the supervisory jurisdiction of this court, are certified copies of all of the proceedings had in the prosecution in the district court, including the original affidavit, the indictment, and so on down to and including the pronouncing of the death sentence. There is no irregularity shown in any of these proceedings. In fact the relator does not contend that there was any irregularity in the indictment, trial, conviction or sentence. His only complaint has reference to the intention of the executive authorities to make a second attempt to carry out the death sentence; and the reasons for his complaint are founded solely upon his having been placed in the electric chair and having been subjected to the attempt to electrocute him on May 3, 1946.

The judge of the district court, in his answer or opposition to relator's petitions, avers that the relator is not in the judge's custody but in the custody of the sheriff, and therefore the relator shows no cause or right of action as to him, the judge. He avers that the execution of the sentence in this case is a matter vested exclusively in the province and authority of the executive department of the state, and in which the judiciary has no constitutional right to interfere, under the facts disclosed in the relator's petition.

An answer or opposition to the relator's petitions was filed by the district attorney for himself and for the sheriff, [fol. 38] and by an assistant attorney general for the state officials against whom the writs are asked for. In this latter answer or opposition it is admitted that the attempt was made to electrocute Willie Francis on May 3, 1946, in obedience of the death warrant, but it is averred that through some latent electrical defect in the apparatus, no electric current reached the body of Willie Francis and for that reason the sentence of death was not carried out. We have no other evidence, of course, as to whether an electric

current did reach the body of Willie Francis. The important fact, however, is that a current of sufficient intensity to cause death, as required by the statute on the subject, and by the death warrant, did not pass through the body of Willie Francis. These respondents or opponents therefore aver that it is the duty of the Governor to have the death sentence carried out, his authority in that respect being subject only to the provisions of Section 10 or Article V of the Constitution, giving him authority to grant pardons or to commute sentences on the recommendation of the Board of Pardons or of any two members thereof. It is averred in this answer or opposition that the inhibition against the inflicting of cruel and unusual punishment, in Section 12 of Article I of the State Constitution, is a replica of the 8th Amendment of the Constitution of the United States, which is applicable to the Federal Courts; and that that amendment has been so construed by the courts that the phrase "cruel and unusual punishment" is not appropriate to the extraordinary circumstances of this case. Hence it is denied that the electrocution of Willie Francis would be cruel and unusual punishment by reason of the attempt to electrocute him made on May 3, 1946.

The respondents or opponents deny also that to electrocute Willie Francis would violate the provision in Section Article I of the Constitution, means the danger of a person shall be twice put in jeopardy of life or liberty for the same offense. Decisions are cited to support the proposition that the word "jeopardy", as used in Section 9 of Articles I of the Constitution, means the danger of a person's being convicted twice for the same offense; hence it is argued that the guaranty against putting a person's life or liberty in jeopardy twice for the same offense has no application to the extraordinary happening in this case.

[fol. 39] Our conclusion is that the complaint made by the relator is a matter over which the courts have no authority. Inasmuch as the proceedings had in the district court, up to and including the pronouncing of the sentence of death, were entirely regular, we have no authority to set aside the sentence and release the relator from the sheriff's custody. And the court certainly has no authority to pardon the relator or to commute his sentence. The only authority to grant a pardon or to commute a sentence is vested in the Governor; and his authority in that respect may be exercised only upon the recommendation of the Board of Par-

dons or of any two members thereof. It is so declared in Section 10 of Article V of the Constitution of this State.

On the 14th of May 1946, after we had written our conclusion to refuse to grant the writs prayed for by the relator, and our reasons for that conclusion, he filed in this court a supplemental petition in which he again invokes the due-process clause in the 14th Amendment of the Constitution of the United States, and invokes the 5th Amendment, declaring "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb", and the 8th Amendment, declaring "nor (shall) cruel and unusual punishments (be) inflicted".

We have found already that there is no violation of the due-process clause of the 14th Amendment involved in this case,

With regard to the 5th Amendment and the 8th Amendment of the Constitution of the United States it is too well settled by the decisions of the Supreme Court of the United States to require citation of these decisions that neither the 5th nor the 8th Amendment has reference to proceedings in the state courts. The prohibitions contained in these amendments, in fact the prohibitions contained in the first ten amendments were not designed as limits against the state governments in reference to their own citizens but as limits upon the Federal power only.

For the reasons stated, the writs of certiorari, prohibition, mandamus and habeas corpus, applied for by the relator, are refused.

Clerk's Certificates to foregoing papers omitted in printing.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—June 10, 1946

On Consideration of the motion for leave to proceed *in forma pauperis* herein,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Jackson took no part in the consideration or decision of this motion.

[fol. 41] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 10, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on Cover: In forma pauperis. File No. 51,005. Louisiana, Supreme Court. Term No. 142. State of Louisiana, ex rel. Willie Francis, Petitioner, vs. E. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana, et al. Petition for a writ of certiorari and exhibit thereto. Filed June 4, 1946. Term No. 142 O. T. 1946.